



**PLANNING COMMISSION
&
CITY COUNCIL JOINT PUBLIC HEARING
MINUTES
May 25, 2010
7:30 p.m.
CITY OF FREDERICKSBURG
715 PRINCESS ANNE STREET
COUNCIL CHAMBERS**

CITY COUNCIL MEMBERS

Thomas J. Tomzak, M.D., Mayor
Kerry Devine, At-Large, Vice-Mayor
Mary Katherine Greenlaw, At-Large
Bradford C. Ellis, Ward One
George C. Solley, Ward Two
Matthew Kelly, Ward Three
Hashmel Turner, Jr., Ward 4

COMMISSION MEMBERS

Roy McAfee, Chair
Dr. Roy Gratz, Vice-Chair,
Susan Spears, Secretary
Ricardo Rigual
Edward Whelan, III
Vic Ramoneda

CITY STAFF

Beverly R. Cameron, City Manager
Kathleen Dooley, City Attorney
Tonya Lacey, Clerk of Council
Raymond P. Ocel, Jr. Director of Planning

Mayor Tomzak called the City Council meeting to order.

Mr. Kelly provided the invocation.

The Pledge of Allegiance was conducted.

Mr. Tomzak read a Proclamation to Mrs. Joyce Lombardo, commending her for her 21 years of service to the City Attorney's office and wishing her well in her retirement.

Mr. Cameron and Ms. Dooley also thanked Ms. Lombardo for her dedicated service as a City employee.

Comments from the Public

Ms. Marilyn Brown, 546 Warrenton Road, Fredericksburg, VA 22406 (Stafford County), said she continues to be concerned with the way the homeless situation is handled by Micah Ministries.

She also said she believed there needed to be changed made to the administrative offices of the FRED bus system.

Mr. Carl Grenn of 1202 Prince Edward Street, Fredericksburg, 22401, referred to "the blighted" property at 1200 Prince Edward Street and said he is very concerned that the City has not taken care of the problems this property has been causing for the surrounding neighbors. He said that after seven cold winters, it was time for the City and City Council to do something for their neighborhood ...and get rid of this ugly, dangerous, derelict blight. He indicated that he had also recently read an article regarding a new law, passed in Richmond, that allows jurisdictions to move forward with removing derelict structures and would like the City to follow suit.

Mr. Bill McLain, 1116 Prince Edward Street, Fredericksburg, VA 22401, said he would also like something done with this property. He indicated that someone had come by to trim a tree that had been uprooted during a storm, cut the tall grass and pick up the trash around the property only after a neighbor complained to the City. He asked that the City and City Council finally remove this dangerous and blighted property.

Ms. Kitty Farley, 536 George Street, Fredericksburg, VA 22401, referred to the upcoming Joint Public Hearing on the Kalahari applications. She said the joint meeting is no longer pressing or necessary due to the recently granted time extension to Kalahari. She said she would like to see the normal process followed with the Planning Commission holding its separate public hearing and the to be afforded additional time to process the applications and allow for further deliberations. She said she agrees with Vice-Mayor Devine's recent comments that... *"the extension of the deadline for issuing the tax-exempt bonds from June 15 to Oct. 15 should give everyone some breathing room, and that any threats that a decision must be made now or else is just "a scare tactic" by Kalahari."* She again asked the City to follow its normal process and hold separate public hearings on the applications.

Mr. Shawn Lawrence, 217 South Street, Fredericksburg, VA 22401, said it was a tremendous relief that the EDA and Kalahari had reached an agreement and hoped that the City continues with the process by voting favorably on the applications before them this evening. He said he believes the project will create badly needed employment opportunities for people of this area as well.

Mr. James Lawrence, 802 Caroline Street, Fredericksburg, VA 22401, distributed documents pertaining to the R-Board. He also spoke about his recent experiences while attending the Clean and Green Commission meetings.

Mayor Tomzak called the City Council Public Hearing to order.

Chairman McAfee called the Planning Commission Public Hearing to order.

Council Clerk, Tonya Lacey, read the public notices for each application.

Mayor Tomzak called on Mr. Ocel to begin his presentation.

Mr. Ocel provided a brief slide show to be used as a guide as he presented each individual application. Mr. Ocel touched on aspects of the application noted in his staff reports, as follows:

Special Use Permit for Cooperative Parking for Kalahari Resorts and the Fredericksburg Expo Center.

Mr. Ocel said that this is a request to permit the use of a portion of parking lot 1 on the Kalahari property to contribute to meeting the parking requirement of the Fredericksburg Expo Center. The existing parking lot that serves the Expo Center will be modified as the Expo Center will be expanded and connected to Kalahari Resorts.

The lot layout plan submitted as part of the application shows the Expo Center on Lot 3 with 457 associated parking spaces. The approved Expo Center site plan provided 1001 parking spaces in three parking areas while 778 parking spaces are required. The parking requirement is based upon the use and square footage of the Expo Center building. Based upon the use and net square footage of the building, the required amount of parking equals 778 parking spaces.

Section 14-126 (4) of the Zoning Ordinance, which pertains to parking, states that: All off-street parking spaces appurtenant to any use other than a residential use permitted in any R district shall be provided on the same site as the use to which it is appurtenant, except where practical difficulties prevent such location or where the public safety or the public convenience require another location. In such cases, the Council may authorize a special permit for alternative or cooperative parking arrangements, subject to the following conditions:

a. An alternative location shall be in the same ownership as that of the land on which the use is located.

The alternative location is currently owned by Celebrate Virginia South LLC and will be purchased by Kalahari Resorts.

b. A cooperative location, which provides parking for two (2) or more uses, shall be in the ownership of at least one (1) of the participants, and shall have combined parking spaces equal to the sum required for the separate uses, except that the amount of space may be reduced by reason of different hours of activity among the various uses, and shall be subject to such arrangements as will guarantee the permanent availability of such space.

This section of the parking ordinance represents an attempt to recognize that it may not always be practical to require all parking spaces to be located on the site where a use is located. The ordinance provides two options to address this as noted above and these options are applicable to any property located in the City.

The property that contains the parking lot where the shared parking will be located is owned by the applicant (Celebrate Virginia LLC) and in the future by Kalahari Resorts. Lot 1, as shown on Exhibit F is identified as the shared parking area and this parking area contains 446 parking spaces. The Expo Center requires an additional 321 parking spaces to meet its minimum parking requirement and this parking lot provides this amount and 125 additional spaces.

c. The entrance to an alternative or cooperative location shall be within five hundred (500) feet walking distance of the entrance to the use such location serves.

The parking lot identified as Lot 1 on the adjacent Kalahari property is located within approximately 225' walking distance of the entrance to the Expo Center. Obviously, the Expo Center patrons that park in the parking area located closer to the Kalahari building will be in excess of the 500' but those spaces still meet the criteria as the *entrance* to the cooperative location is within 500' to the entrance of the Expo Center.

Mr. Ocel said that Staff recommends approval of the special use permit with the conditions outlined in the City Attorney's resolution.

The following conditions are recommended:

1. That 321 shared parking spaces located in Lot 1 as shown on a plan entitled Exhibit F, Cooperative Parking Special Use Permit, Kalahari/Expo Cooperative Parking Arrangement be provided for the use of all Expo Center visitors, employees and vendors.

2. The right to occupy the Expo Center shall be contingent upon the continued availability of the off-site parking. Off-site parking to include the use of at least 321 parking spaces on the adjacent Kalahari Resorts property. The loss of some or all of the off-site parking shall result in the loss of the right to occupy a prorated portion (or all) of the Expo Center building.
3. The applicant or owner shall notify the Zoning Administrator in the case of the loss of some or all of the off-site parking.
4. The cooperative parking use shall be permitted only so long as it continues and is not discontinued for more than two years.

Special Use Permit to Celebrate Virginia South, LLC and Kalahari Resorts to Construct a Building in Excess of 90 Feet in height on Property Located in Celebrate Virginia South for the Kalahari Resort.

Mr. Ocel said that this is a request to seek a special use permit in order to construct the Kalahari Resort building above the maximum height limit of 90 feet. The property is zoned PDC, Planned Development Commercial, which permits building heights to a maximum of 90' but this height may be exceeded with the issuance of a special use permit. The property is located within Celebrate Virginia South (CVS) project area. This project currently contains several commercial buildings, three hotels, the Expo Center and the Wegmans grocery store.

The applicant proposes to construct a 155' tall building that will house approximately 850 hotel rooms, an indoor water park, a family entertainment area, restaurants and lobby area. The project will also expand the Expo Center space. The existing Expo Center will be used for exhibitions and shows while the new space in the Kalahari building will be used for conference space.

The indoor water park is a very large and open space rising approximately 100' to a clerestory and will utilize a foil system in the roof to allow large amounts of light to filter in from the outside. The Convention Center will be added to the adjacent Expo Center and is a single story of similar height to the existing Expo Center. The hotel tower, which will be a total of eleven stories with a basement, will be accessed from the lobby. The shape of the tower is broken into several angles that create a serpentine effect that helps to break up the mass of the building.

Special use permits are evaluated utilizing the criteria contained within section 14-704 of the Zoning Ordinance and they include:

- (a) The proposed special use at a specified location shall be:
 - (2) In harmony with the adopted comprehensive plan;
 - (3) In harmony with the purpose and intent of the zoning district regulations;
 - (4) In harmony with the existing uses or planned uses of neighboring properties.
- (b) The proposed special use and related improvements shall be designed, sited, landscaped and otherwise configured such that the use will not hinder or discourage the appropriate development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.

(1) In harmony with the adopted comprehensive plan;

Please see previous staff comments for a review of this criteria.

(2) In harmony with the purpose and intent of the zoning district regulations;

The intent section of the PD-C district states that the district is established to provide locations for a full range of retail commercial and service uses which are oriented to serve a regional market area. The district also provides for planned employment centers with offices and professional business uses. The district should be located adjacent to major transportation arteries, with development encouraged in centers planned as a unit.

The corresponding uses permitted by right and by special use permit are listed because they contribute towards meeting the intent of the district. This particular resort use will not only establish CVS as a major destination in the region but also attract other businesses that will further strengthen CVS as a tourist destination as contemplated in the Comprehensive Plan. This is an appropriate area of the City for this and similar uses and they will support and compliment the commercial uses in the district as well as one another. It is anticipated that visitors to Kalahari will support the many retail and restaurants businesses in Central Park as well as the businesses in CVS.

It is conceivable that the subject property can be developed with either a commercial or a tourism/resort use but a tourism use at this location would be appropriate given its proximity/visibility to I-95. This primary tourism component of the overall CVS project will provide an incentive for other complementary businesses to locate in CVS which will help to insure a mix of uses that are important to the overall development health of the area. As CVS develops, additional uses may be developed in this manner or in a mixed use building concept envisioned in the Jumpstart Plan for example.

(3) In harmony with the existing uses or planned uses of neighboring properties.

The existing land uses in this area of the City and in the CVS and in Central Park are oriented towards commercial uses. At the present time, the Expo Center and Wegmans are the uses located closest to the site.

The future land use map contained within the Comprehensive Plan designates this property as planned commercial as is all of the land to the east and west. The river is located on the northern boundary and Central Park is located to the south.

The Haven residential project is the most recent project proposed in the area at this time as Central Park is essentially built out and the CVS property has no pending applications. However, the Kalahari project is still progressing towards submission of plans and may be the next development application in the area. It is not anticipated that the existing land uses in the area will change appreciably in the near future.

This use will be in harmony with existing uses and future uses will more than likely be complementary to Kalahari as the tourism campus develops.

(b) The proposed special use and related improvements shall be designed, sited, landscaped and otherwise configured such that the use will not hinder or discourage the appropriate development or use of adjacent, neighboring or community land and structures, or impair the economic, social or environmental value thereof.

Development of the property as proposed will not hinder development elsewhere in the area. Exhibit C found within the application materials depicts the layout of the property with the building and parking area. Vehicular access will be provided by Carl Silver Parkway.

The applicant provides justification for the required building height on pages 17-18 in the application. In review, the applicant notes that the magnitude of the offerings, the number of

rooms and the staggering square footage of its marquee amenity offering, the indoor water park, hold the key to the ultimate success of the resort. Other justifications provided for the need for the height special use permit include: the need to design the hotel corridors to accommodate efficient mobility inside the resort (providing more hotel floors keeps the length of the corridors from getting too long); the size of the property that requires the development to be built up as opposed to being built out; and the need for visibility from I-95.

In order to properly evaluate the additional height being requested, staff requested that the applicant provide drawings and computer generated drawings to show the proposed building on the property. Several exhibits in the application provide these perspectives.

Exhibit #2.

This exhibit shows the proposed building on the site as viewed from the southbound lanes of I-95. The Slavery Museum property is located to the north and not shown on this sheet. The Visitors Center property is located to the south but not visible from this angle. As Council and Commission members know, this is a single story building. Please note on this exhibit that the highest point of the building is noted, and the approximate elevation of the lobby and the indoor water park is noted.

Exhibit #3.

This exhibit shows the proposed building on the site as viewed from the median of I-95. This location is south of the viewing area shown in exhibit #2. Note on this exhibit that again the highest point of the building is shown. The Expo Center building is noted as well as the three hotels to the south and the Visitors Center.

Exhibit #4.

This exhibit shows the proposed building in context with the Expo Center. It also depicts the highest point of the building at 155'; the lobby floor elevation and the water park elevation inside the building. The Expo Center building is shown being connected to the Kalahari building at a similar height. The approximate height of the Expo Center is 40'.

The Finish Floor Elevation (FFE) of the Expo Center is 256.0, so the roofline of that building would be approximately 296.0 or 40' tall.

The reference point for Kalahari is 224.0, 32 feet below the FFE of the Expo. So considering the requested building height of 155 feet, the highest point on Kalahari (379.0) would be 83 feet above the roofline of the Expo Center.

The vast majority of the Kalahari building, including the Lobby, all but 5 floors of the Hotel Tower (and associated items over the Hotel Tower roof), and the majority of the Indoor Waterpark will be at or under the elevation of the existing Expo Center roof. Therefore, nearly all elements of the proposed Kalahari building are within the existing height limitation of 90 feet.

Exhibits #5 and #6.

These two exhibits show aerial views from the southwest and west and are meant to provide a context of the area with the new building being shown.

Exhibit #7 and #8.

An agreement between the City and Celebrate Virginia LLC was ratified in 2005 that placed a number of conditions upon the development of CVS and one of the conditions is in regard to building visibility from the river. Buildings within CVS shall not be visible to the naked eye from

the Rappahannock River frontage of Tax Parcel 312-A-PB regardless of the season. Therefore, staff requested that the applicant provide exhibits that show that the proposed 155' tall building will not be visible from the river. The exhibits were taken from two different points on the north river bank and each show, through a sight line study, that the building will not be seen from these two points on the river.

At the top of each exhibit is a line of sight drawing that shows the point on the river where the view was taken and an angle to the building. Each exhibit shows that the building cannot be seen from the river. The exhibits also show the location of where the view was taken. Pages 19-26 found within the applicant's application materials provides a good analysis of how the study was conducted and who was involved. Staff has reviewed this information and found it to be consistent with discussions between the staff and the applicant's representatives prior to the test.

Exhibit #9.

Exhibit #9 is provided to show the building sections and how they relate to the overall height and function of the building. This can be seen at the bottom of the page. The exhibit shows the base elevation of the building at elevation 248, the same as the parking area, porte cochere and the bridge leading up to the lobby area. The restaurants are also proposed to be located at this same elevation. The family entertainment center is proposed to be located below these functions and the basement area that houses the laundry area, food storage and the mechanics of the indoor water park is located below the family entertainment center. Note that the indoor water park base floor elevation is at the same elevation as the family entertainment center for ease of access between these two major activity areas.

Lastly, the hotel tower is shown in context with the other uses in the building and shown at its highest point of 155'. As mentioned earlier, this portion of the building will rise approximately 83' above the roof line of the Expo Center given their respective heights and ground floor elevations.

The site is arranged in a manner that locates parking areas primarily in front of the building. Only employee parking is planned for the rear of the building. The outdoor water park will also be constructed to the rear of the building as shown on Exhibit #9.

The reasoning and information provided by the applicant to support the special use permit is sound and supported by the exhibits and staff is in agreement with the need for the special use permit.

If the City Council approves the special use permit, the following conditions are recommended by City Staff.

1. That the maximum height limit for the hotel building be increased to 155'.
2. That the building be constructed in the location generally shown within the application materials.

Special Exception to Celebrate Virginia South, LLC and Kalahari Resorts to Construct a Digital Reader Board Sign on Property Located in Celebrate Virginia South for the Kalahari Resort

Mr. Ocel said that this is a request to approve a special exception to permit the use of an electronic variable message sign adjacent to I-95 on the property proposed to be developed by Kalahari Resorts in the Celebrate Virginia tourism campus. The property is zoned Planned Development Commercial (PDC) as is all the surrounding property with the exception of the VDOT visitors center which is zoned R-4, Single Family Residential.

The proposed freestanding sign as depicted in the Special Exception Permit Application and is proposed to be located adjacent to I-95 as shown on Exhibit E. The overall size of the sign which

is made up of three components; the elephant cabinet, the electronic message sign and the Kalahari/Celebrate Virginia cabinet is approximately 990 square feet and approximately 110 feet in height. The PDC sign regulations permit one freestanding project sign that does not exceed 1000 square feet or 175 feet in height. The sign may be illuminated. Therefore, the size and height of the sign meets current sign regulations. However, Section 78-82(c) of the sign regulations states that: "No electronically or similarly operated intermittent or variable message sign displaying computer programmed messages or intermittent light, or any sign which involves motion or rotation of any part of the sign structure or display, may be erected which is visible to the main travel way of interstate or federal aid primary highways within the city."

Therefore, the applicant has submitted a special exception application requesting use of an electronic sign component in the overall free standing sign. For a detailed look at the sign in the context of its surroundings, please see Exhibit E contained within the special exception application materials.

In order to establish a successful Kalahari Resorts within CVS, the applicant notes that "the magnitude of its sign package and overall marketing and advertising program is commiserate with the impact which must be made on the region to further bolster the prospects of the project's success. In this light the two sided "V" sign, with modern electronic capability places Kalahari's initiatives in the same realm as the rest of the modern project." The applicant has also noted in meetings with staff, that other large regional entertainment projects such as Kings Dominion, make use of large electronic message boards within its overall advertising sign package.

Included within the application materials is a layout plan of the property. These plans depict the proposed building footprint and the supporting parking area. The rear portion of the property is proposed to be improved with the outdoor water park.

When the Planning Commission and City Council review, consider, and act upon an application for a special exception under City Code 78-967, they shall do so using the following criteria:

a. Whether the grant of a special exception is consistent with the City's Comprehensive Plan;

The future land use map contained within the Comprehensive Plan designates this property as planned development/commercial. The surrounding properties are all designated in the same manner with the exception of the vacant 120 acre parcel directly to the south which is designate planned development/mixed use. The property lies within Land Use Planning Area 1: Celebrate Virginia.

The Key Issues for this Area, which includes the applicants' property, are as follows:

- Integrate the Celebrate Virginia tourism campus with natural and historic attractions
- Protect the Rappahannock River and scenic vistas
- Protect environmentally sensitive areas such as floodplains and resource protection areas
- Protect historic sites
- Develop greenways and nature trails
- Improve access to the planning area from Interstate-95
- Enhance this highly visible gateway, which is a first impression to travelers driving south on Interstate-95.

All of these issues are relevant to the overall project but not directly to the applicants' project. There are identified historic resources in the overall project but it does not include the applicants' property.

Recommendations for Planning Area 1:

- 1 Facilitate the continued development of a regional commercial activity center, focusing on improving the City's position as a visitor destination.
- 2 Promote the City as a visitor destination by facilitating related private development in coordination with public amenities.

Chapter 7: Suburban Business Districts addresses and supports the development of the CVS property in the following manner:

Most notably, the Central Park area serves as both an important local and regional shopping area for residents and as a major economic resource for the City. The Celebrate Virginia campus is being developed as a major retail and hotel/conference center, to also include education and entertainment services, providing another activity center for regional tourism within the City. It is important to the City that these areas remain economically viable for the long-term future, that traffic and access is provided in a safe and efficient manner, and that these business districts continue to develop in a high quality manner that reflects well on the City image.

At this point, there is no reason to doubt the economic viability of the suburban business districts. Given the importance of the new suburban business areas to the economy of the City and given the ever changing dynamic of the retail industry, however, it will be important to monitor the health of these business areas for longer range purposes. The City should promote the highest quality of new development or redevelopment in order to promote long-term sustainability of the area and help assure that these areas remain economically viable over time. The primary theme of this chapter is to recognize the importance of these areas so that their health and vitality will be recognized as a long-term City goal. Given the long-range nature of this issue, several broad goals are included, and initiatives are limited to a few items.

Goals for Suburban Business Districts

Goal 1: Shopping and Entertainment

The suburban business districts will provide high quality shopping and entertainment opportunities to the City and region for the long-term future.

Goal 2: Economic Benefit

The suburban business districts will continue to provide a strong economic benefit to the City for the long-term future.

Goal 3: Complements Other Business Centers

New suburban business districts will complement the downtown and business corridors and will contain retail businesses, offices, restaurants, and entertainment/education facilities that offer a wide variety of goods, services, and jobs to residents.

Policies for Suburban Business Districts

The following key policy statements provide guidance for enhancing new and existing suburban business districts.

1. Monitor the economic health of the suburban business districts for the purpose of detecting long-term economic prospects or problems.
2. Stay in communications with the owners of businesses to assist with the monitoring of the area.

Initiatives for Suburban Business Districts

These initiatives outline the key steps for implementing the long-term goals and guiding policies for Fredericksburg's business districts. ***The first initiative is a top priority for action.***

I. Collaborate with the developer(s) of Celebrate Virginia South to ensure the successful development and promotion of that tourism and retail campus.

The applicant provides an analysis of this review criterion on pages 12-14 within the supporting application materials.

b. Whether there has been sufficient period of time for investigation and community planning with respect to the application.

Discussions between the City and Kalahari about developing a Kalahari Resorts in the City began several years ago and resulted in a Performance Agreement between the two entities. Other properties in the Commonwealth were evaluated by Kalahari Resorts in Virginia to build an indoor water park but were not pursued after settling on the CVS property in the City.

Upon learning of Kalahari Resorts interest in locating in the City, the Silver Company and the applicant sought to discuss their plans with the City prior to submittal of any applications. And as previously mentioned these discussions have been on-going for the past several years.

The applicant provides an excerpt from the Performance Agreement on page 18 of the application in regard to the sign in question. In short, the two excerpts state that Kalahari will permit the City to use the video screen to provide "Amber Alerts" and to publicize community activities.

Section 7.3 of the Performance Agreement states in part, "The City will favorably consider the construction and operation of an animated video sign for the project of approximately 29' X 18' in size plus peripheral signs in locations reasonably close to I-95. Please see page 18 for the entire text of this part of the Agreement.

As part of this review process, both the City Council and the Planning Commission will hold a public hearing on this application.

The applicant provides an analysis of this review criterion on pages 15-19 found within the application materials.

c. Whether the special exception is consistent with the principles of zoning and good zoning practice, including the purpose the district in which the special exception would be located, existing and planned uses of surrounding land, the characteristics of the property involved, and the adverse impacts of the proposed use.

The applicant has stated that the proposed sign is consistent with the overall CVS project and particularly with the Kalahari development and will not create any adverse impacts.

Given the nature of the uses in CVS and the uses to come in the future it is not foreseen that this sign will create any adverse impacts upon surrounding land uses. The property does not have any immediate neighbor to the north (Slavery Museum site) while the Visitors Center is located to the south. None of the aforementioned properties will be negatively impacted by the use of the approval of the permit.

Future land uses in the CVS project area are anticipated to support Kalahari as they will most likely be tourism related uses and will benefit from its presence.

As provided earlier in this memo, this property as well as surrounding properties are all predominately zoned PDC with the exception of the Visitors Center and are planned similarly.

The applicant notes on page 19 that Kalahari has made the approval of the sign a matter of great importance since it began discussions with the City and the developer. Both existing Kalahari properties make use of a similar sign and have been very effective.

d. Whether the proposed use or aspect of the development requiring the special exception is special, extraordinary or unusual.

As noted above Section 7.3 of the Performance Agreement states in part, "The City will favorably consider the construction and operation of an animated video sign for the project of approximately 29' X 18' in size plus peripheral signs in locations reasonably close to I-95, including the favorable consideration of any necessary height variances. The City further agrees to cooperate with Kalahari in connection with obtaining all necessary governmental and quasi-governmental agencies, bodies, entities, board and authorities that have jurisdiction over such signage. The City will favorably consider any necessary approvals for new "interstate signage" for the Project. Kalahari acknowledges that the City Council cannot commit to the approvals refereed in this section in advance of the filing of an application and the public hearing process, and nothing herein shall constitute such a commitment.

The applicant states that Kalahari has made the approval of the sign a matter of great importance as it is a major component of the marketing initiative of the resort and its visibility. The sign has been an integral point of discussion since Kalahari began discussions with the City and the developer. Both existing Kalahari properties in Wisconsin and Ohio make use of a similar sign and have been very effective according to the applicant.

e. Whether the applicant has demonstrated that its application meets all these criteria.

The applicant's submittal provides all the project specific information that is available and addresses the special exception criteria and believes that the proposed project meets or exceeds the criteria requirements for issuance of the special exception and staff concurs.

Mr. Ocel said that Staff recommends approval of the application with the conditions listed in the City Attorney's resolution. The following conditions are recommended:

1. That the sign be constructed in general conformance with the application materials.
2. That the size of the sign devoted to the electronic message center be no larger than 500 square feet.

A Comprehensive Plan Compliance Review request to determine whether the proposed vacation of a dedicated and unimproved portion (approximately 3.244 acres) of Carl D. Silver Parkway located in Celebrate Virginia South is substantially in accord with the City's Comprehensive Plan, as required by Virginia Code Section 15.2-2232.

Mr. Ocel said that this is a request to determine whether the proposed vacation of a portion of the unimproved Carl D. Silver Parkway right-of-way as shown on Exhibit B contained within the application materials is substantially in accord with the City's Comprehensive Plan, as required by Virginia Code Section 15.2-2232. This section of the Code requires the Planning Commission to review and approve the proposed vacation of a public right-of-way, as being substantially in accord with the adopted Comprehensive Plan or part thereof.

The applicant requests that this portion of unimproved right-of-way be vacated in order to enable development of the surrounding property by Kalahari Resorts. Additional right-of-way will be

dedicated in an alternative location that will again provide the loop roadway throughout Celebrate Virginia South.

The question for the Planning Commission is whether the proposed vacation of the right-of-way is substantially in accord with the adopted Comprehensive Plan or part thereof.

The City's Comprehensive Plan was adopted in September of 2007. The current Plan and previous associated studies address the downtown area in a number of places. Chapter 8, Transportation and Mobility address unimproved streets and alleys in the following way:

Older areas of Fredericksburg contain streets and alleys, some of which have been used over time for vehicle and/or pedestrian movements, some of which have remained unimproved and exist only as un-opened public right-of-way. In some circumstances, these streets and alleys have the potential for enhancing pedestrian, bicycle, and automobile mobility by providing additional travel routes. In other cases, the dedicated public right-of-way does not offer any viable connection or travel route. *Periodically the City receives a request for vacation of an unused right-of-way. Action by the City to approve or deny such a request should be based upon whether or not the subject right-of-way appears on any plan as a possible street, sidewalk, path, or bikeway, and whether or not the subject corridor has potential for such use.* (Emphasis added)

The improvement of the right-of-way also does not appear to be called for in the Transportation and Mobility's Goals, Policies and Initiatives set forth in Chapter 8 of the Comprehensive Plan. The Carl D. Silver Parkway unimproved right-of-way is not included in any of the proposed trail alignments envisioned by the City's trail plan, "The Fredericksburg Pathways Plan" (2006).

The purpose for the right-of-way vacation is to enable the construction of Kalahari Resort in the Celebrate Virginia South tourism campus as shown on Exhibit B. At the time the right-of-way was dedicated, the Kalahari project was not being considered and the property owner, Celebrate Virginia South, LLC had a different plan of development for this area. In order to bring this project to fruition, the right-of-way must be re-aligned as shown on Exhibit B. The applicant has had extensive discussion with staff about the new alignment and design, most notably with the Public Works Director and City Engineer and they have agreed to the new alignment and design as shown on Exhibit B.

Mr. Ocel said that staff recommends that the Planning Commission determine that the proposed right-of-way vacation is in substantial accordance with the 2007 Comprehensive Plan as the right-of-way does not serve a critical transportation function, and there are no future plans for the improvement or use of this right-of-way in any City plan or document. To the contrary, vacation of this right-of-way will enable the adjacent property to be developed by Kalahari Resorts into a regional tourism attraction.

Authorizing the Abandonment, Vacation, and Quit-Claim of an Unimproved Portion of the Existing Card D. Silver Parkway in Celebrate Virginia south in Exchange for New Right-of-Way, to Accommodate the Development of Kalahari Resorts.

Mr. Ocel confirmed that only the City Council need or is required to act on this request, following determination of Comprehensive Plan Compliance Review, directly above.

Mr. McAfee asked Commissioners if they had any questions for Mr. Ocel.

Dr. Gratz referred to the parking special use permit request. He noted that one of the lots appeared to be a bit of a distance away from the Expo Center and asked if there would be shuttle buses, to accommodate those persons parking in that lot (Lot #2).

Mr. Ocel said the lot to which Dr. Gratz refers is planned as an "auxiliary lot" and is not required parking. He said he would need to allow the applicants to answer the question of shuttle buses.

Dr. Gratz referenced the special exception request for the sign. He said he is unclear of the nature of the sign – whether it will be of a video nature with moving images or still images that change from time to time.

Mr. Ocel said he would like to have the applicants address this question as well but that he had recalled it may be capable of doing both.

Dr. Gratz referenced highway bonus agreements, where he said he read that highway funds are provided to certain areas that do not have constantly changing highway signs. He also said he is concerned with regard to safety when drivers are taking their eyes off the road to read changing signage. He said he would have a problem with constantly changing messages.

Mr. McAfee asked Mr. Ocel to explain the safety issue raised by Dr. Gratz.

Mr. Ocel said he would prefer the applicant to address the concern.

Mr. McAfee said he would also like staff to address the issue and asked if it is known whether State of Virginia has an issue with these signs at locations where they currently exist.

Mr. Ocel said to his knowledge the closest sign of this nature is located at Kings Dominion to the south, and that Quantico Office Park, located off of I-95, to the north, recently erected a similar type of signage. He said that the City sign ordinance does not have specific regulations on how long these types of signage must be stationary but that the owners of these types of signs must receive VDOT approval as well.

Mr. Rigual asked if there exists a plan, which shows the height of the proposed addition to the Expo Center, which would show how it will transition the Kalahari building height and the Expo Center site.

Mr. Ocel said the height would be approximately that of the existing Expo Center.

Mr. Whelan asked if there had been any additional progress on the wayfinding signs to be located in the proposed area.

Mr. Ocel said there is cooperation with the City and Central Virginia South for the wayfinding signs and areas the City can utilize to market its downtown.

Ms. Spears asked that since people have voiced safety concerns with regard to this type of signage and that the Kings Dominion sign has been consistently referenced as a similar type of sign, whether there are any statistics of accidents in the Kings Dominion area of I-95.

Mr. Ocel said he is not aware of any statistics at this point in time.

There were no further questions of staff from the Planning Commission.

Mayor Tomzak called the applicants forward to provide their presentation of the applications before them.

Mr. Scott Little, Director of Development, Celebrate Virginia South, provided an additional slide show of the projects important aspects (as outlined by Mr. Ocel earlier in the evening). He said the project will provide approximately 1200 jobs; 600 construction jobs and \$174 million in economic impact for the City.

Mr. Keith Oster, Vice-President for Prime Design Engineering, explained the need/requirement for cooperative parking between Kalahari and the Expo Center. He added that there would be 2m,700 parking spaces provided, far exceeding the required parking of 2,285

Mr. Little confirmed that the building height of the Expo Center addition would be the same height as the Expo Center.

Mr. Oster provided a detailed explanation of balloon tests conducted to ensure the building would not interview with the river viewshed.

Mr. Little said the sign would be an LCD Panel (television), programmed per code. The sign will be brighter during the daylight hours and dimmer during evening hours. He noted that VDOT has standards that sign owners must follow as well as Federal Highway Standards. He said the sign is not permitted to change more than every 4 seconds and that the applicants intend to have their sign change no less than every 5 seconds. He also pointed out that he is aware of safety studies that have been conducted and that there is no proof that this level of distraction would cause safety hazards.

Mr. Little said he is aware of a request to include an additional condition to require the applicants to allow the City to utilize 1/3 of the proposed signage for a few seconds each minute, as needed. However, he said the performance agreement already allows the City to use the sign once in a while. He said the sign is intended to draw attention of passers by and without it the project would not succeed. He said the Kalahari building includes a storefront that can be used by the City at any time and that the City is able to change the "theme" at any time. This allows for the City to be able to advertise events and special occasions as well.

Mr. Little said they would certainly accommodate the FRED bus system.

Mayor Tomzak asked City Council if they had any additional questions for the applicants.

Ms. Greenlaw asked Mr. Ocel if the proposed LCD sign for Kalahari is similar to that of the Eagle Village sign.

Mr. Ocel said yes, it is similar.

Mr. Solley noted that providing a 2,700 space parking lot utilizes a considerable amount of asphalt. He asked what ongoing steps would be taken to ensure that there is no additional damage to the wetlands, which surround the subject property.

Mr. Oster said they are using a Master Stormwater Plan. He said they are conducting stream restoration in conjunction with using low impact development bio filters and that they will be collecting all parking runoff in large parking cells. He said they also have plans for a rooftop garden for a portion of the roof and will also be collecting roof drainage. He said they have several supplemental features in place that go above and beyond what would normally be required.

Vice-Mayor Devine referenced the proposed signage and said the concern is centered around safety issues of providing a sign of this nature. She asked if the "standards" were to change, which would require stricter regulations, whether this sign would be grandfathered in.

Mr. Little said the proposed sign is "not a development sign" and that they would be *required* to change and conform with any regulations that would change.

Mr. McAfee asked Planning Commissioners if they had any further questions of the applicants.

Dr. Gratz confirmed that the sign would not be a video and that it would be LCD vs LED.

Mr. Little said this was correct.

Dr. Gratz asked if there are provisions in place to widen the road to four lanes in the future, if needed.

Mr. Oster responded, yes. He said this has been discussed and that the two-lanes would be able to be made into a four-lane undivided road if needed.

Dr. Gratz noted that the request for the building height is 155 feet. He noted there is a Kalahari sign above the roof and asked if this is all inclusive.

Mr. Oster responded, yes.

Mr. Ramoneda referred to the sign and message board and asked the size of the Kalahari signs in its other existing locations.

Mr. Little provided a couple dimensions, from memory. He said they are pretty much the same size but that the others are approximately 70 feet in height.

Mr. Ramoneda asked if the City becomes more permissive in its regulations would this change.

Mr. Little said he was not sure how to answer that question and noted that he did not see that scenario happening.

Mr. Ramoneda asked where the employees park.

Mr. Oster said that typically employees are required to park in the more remote or auxiliary areas.

Mr. McAfee noted that he appreciates the applicants addressing the questions relating to the sign and other applications. He said his area of concern, however, is when he reads specifically from the performance agreement, which says the consent and approval of Kalahari, "...which may be given or withheld in its reasonable exercise of discretion..." to him is not that much of a performance agreement, if they can just say *no, we are not going to let you advertise this*. Although we are all being friendly right now and hopefully in the future, he asked what guarantees the City access to the use of that leader board?

Mr. Little said he respects Mr. McAfee's questions and concern. He said that what guarantees the use is the spirit of the performance agreement makes it clear. He said because this is not a development sign they are not permitted to do any advertisement off site. He said the applicants are in the process of seeking a permit to allow the City to use the sign for advertising special events such as the Heritage Festival, as an example.

Mr. McAfee asked who issues this permit.

Mr. Little said VDOT would issue the permit.

Mr. McAfee said he would appreciate it if this could be discussed with the City Council, to tighten up the agreement so it is not so broad.

Mr. Little said he would rather accomplish the end without cracking into the agreement.

There was no more Planning Commissioner Comment.

PUBLIC COMMENT

James Lawrence, 802 Caroline Street, Fredericksburg, VA 22401, said he had some concerns with the parking and hopes that the applicants will ensure the project provides more benches.

Mr. James Lindsay, 11401 Mead Point, Virginia 22551, spoke in favor of the application. He added that he is opening a business around the subject location and that approval of these applications will ensure not only success for the City but for his business as well.

Mr. Shawn Lawrence, DisAbility Resource Center, said he hopes the FRED bus stops in the area would provide shelter as people with disabilities need to be able to have a place to be sheltered while waiting for the bus.

Kitty Farley, 536 George Street, Fredericksburg, VA 22401, asked that her written/spoken comments be made part of the record. Following is a verbatim transcript of Ms. Farley's comments:

It is somewhat disheartening to speak to this issue as all of the supporting documents refer to the Performance Agreement already executed by City Council, which state that a LED sign is integral to the success of the project. However, let me quote the last sentence of that agreement, which provides wiggle room, "Kalahari acknowledges that the City Council cannot commit to the approvals referred to in this Section 7.3 in advance of the filing of an application and the public hearing process, and nothing herein shall constitute such a commitment." I therefore ask you to set aside the performance agreement and objectively listen to those speakers who may oppose this sign.

Our current sign ordinance clearly prevents LED type signs along the interstate. Now you are being asked to set aside this provision and allow an exception for Kalahari.

Ladies and Gentlemen, this is all about precedent. Once you undermine your Zoning Ordinance by opening the proverbial "barn door," it will be very hard to close it again. How do you justify saying "yes" to Kalahari but "no" to future developers? It's like any decision by your ARB, where each and every decision sets a precedent for future decisions.

I recently had to travel to Las Vegas, where these jumbotron signs sprout up like mushrooms, creating a ghastly, urban landscape, assaulting the senses. Instead of one LED sign, picture numerous ones along I-95. Is this what we want adjacent to the Rappahannock River, adjacent to our Welcome Center with its traditional Virginia architecture? Is this the image we want to project of Fredericksburg? We do not have to compete with Las Vegas; thankfully, it's at the other end of this country. Certainly signage is important to the success of this project. However, I would not make a decision to stop at a water park based on whether or not it had a moving sign. Rather, the presence of LED signs speaks volumes to me about what citizens want to project about their community.

I urge you to uphold your excellent Zoning Ordinance. You have already made many concessions – in fact, 60 million – to this developer. You do not need to make another one, one which will compromise the regulation of our Zoning Ordinance.

There were no additional public comments.

Chairman McAfee closed the public hearing on these items.

Chairman McAfee asked the City Attorney if approving this sign would be precedent setting for other applicants that may seek the same exception.

Ms. Dooley said that this sign is required to follow the Special Exception criteria where an application must have an extraordinary use, or circumstances that require an extraordinary

response, or something that one may never see again. This criteria would be applied to any Special Exception application.

Chairman McAfee called for a vote on the applications.

Special Use Permit for Cooperative Parking for Kalahari Resorts and the Fredericksburg Expo Center.

Ms. Spears made a motion to recommend approval of the special use permit with the conditions outlined in the Resolution provided by the City Attorney.

Dr. Gratz seconded the motion.

The Clerk of Council called for a roll call vote:

Commissioner Whelan – Aye
Commissioner Gratz – Aye
Commissioner Rigual – Aye
Commissioner Ramoneda – Aye
Commissioner Spears – Aye
Chairman McAfee – Aye

Motion carried by a vote of 6 – 0.

Special Use Permit to Celebrate Virginia South, LLC and Kalahari Resorts to Construct a Building in Excess of 90 Feet in height on Property Located in Celebrate Virginia South for the Kalahari Resort.

Mr. Rigual made a motion to recommend approval of the special use permit with the conditions outlined in the Resolution provided by the City Attorney.

Mr. Whelan seconded the motion.

The Clerk of Council called for a roll call vote:

Commissioner Whelan – Aye
Commissioner Gratz – Aye
Commissioner Rigual – Aye
Commissioner Ramoneda – Aye
Commissioner Spears – Aye
Chairman McAfee – Aye

Motion carried by a vote of 6 – 0.

Special Exception to Celebrate Virginia South, LLC and Kalahari Resorts to Construct a Digital Reader Board Sign on Property Located in Celebrate Virginia South for the Kalahari Resort

Ms. Spears made a motion to recommend approval of the special exception permit with the conditions outlined on the Resolution provided by the City Attorney.

Mr. Rigual seconded the motion.

Mr. McAfee commented that he hoped the applicants and the City move forward to tighten up the performance agreement.

The Clerk of Council called for a roll call vote:

Commissioner Whelan – Aye
Commissioner Gratz – Aye
Commissioner Rigual – Aye
Commissioner Ramoneda – Nay
Commissioner Spears – Aye
Chairman McAfee – Aye

Motion carried by a vote of 5-1.

A Comprehensive Plan Compliance Review request to determine whether the proposed vacation of a dedicated and unimproved portion (approximately 3.244 acres) of Carl D. Silver Parkway located in Celebrate Virginia South is substantially in accord with the City's Comprehensive Plan, as required by Virginia Code Section 15.2-2232.

Mr. Ramoneda made a motion determining that the proposed vacation is in compliance with the Comprehensive Plan.

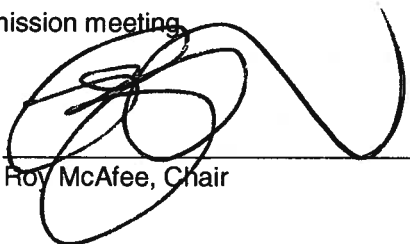
Mr. Whelan seconded the motion.

The Clerk of Council called for a roll call vote:

Commissioner Whelan – Aye
Commissioner Gratz – Aye
Commissioner Rigual – Aye
Commissioner Ramoneda – Aye
Commissioner Spears – Aye
Chairman McAfee – Aye

Motion carried by a vote of 6-0

Chairman McAfee adjourned the Planning Commission meeting.



Roy McAfee, Chair